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No.DGP/14/66/Nagpur/2000
Mumbai, dt. 13-3-2000

CIRCULAR

Sub : Completion of investigation within the prescribed period of 60/90 days as contemplated in Section 167(2) Cr.P.C...... Non-filing of charge-sheet within the prescribed time by the I.O. will render him liable for disciplinary action as well as contempt of court .... Directives by the Hon'ble High Court, Bench at Nagpur while deciding Criminal Application No.600/1999 by Smt.Bhulabai Matre & Criminal Application No.601/1999 filed by Shobha Matre, Ramesh Bawne & Ramesh Matre vide its judgement dt.7-6-1999.

Criminal Application No.600/1999 was filed by Smt.Bhulabai Matre and Criminal Application No.601/1999 was filed by Shobabai and 2 others before Hon'ble High Court, Bench at Nagpur, seeking cancellation of bail proceedings.

2. While delivering the judgement on 7-6-1999, the Hon'ble High Court has prescribed the procedure regarding completion of investigation and filing of charge-sheet within the prescribed period of 60/90 days as contemplated in Section 167(2) Cr.P.C. The said procedure will serve the interest of justice by promoting mandate as enshrined in Article 21 & 22 in Constitution of India. Abstract of Para 13 & 14 of the directions issued by Hon'ble High Court in this regard are reproduced below :-

"(13) The Applicant Smt.Shobha w/o Ambadas Matre has made specific allegation that the investigating agency failed to file charge-sheet within the prescribed ~~xxx~~ period of 90 days in P.S. Crime No.80/1998, with sole object to facilitate the release on bail of accused/ non-applicants in the case, which otherwise they would not have been entitled to. Such ~~xxxx~~ conduct of the investigating agency is not unknown to the ~~xxx~~ court. Justice Punchi in Aslam Babalal Desai's case has made a reference to this aspect by observing that :-

"It cannot be overlooked that, a bail order under Section 167(2) of the Code could even be managed through a convenient investigating officer, however, heinous be the crime. The court would have to grant bail under the mandate of law, debarred as it is to see to the merits of the case at that stage. To say that, henceforth, the court is forever shut to see to the merits of the case, through it otherwise has power to cancel bail is to deprive it of its elementary function to administer justice and weigh the claims on meritx inter se. I would rather loath for such an ~~interpretation~~ interpretation as what would frustrate justice, and would on other hand let the court have the power to cancel bail, for once examining the merits of the case in such a situation".

Presently it has become a very common practice to obtain bail, in default, by such dubious method. Therefore, this court proposes to /incorporate certain steps to be taken by the investigating officer, the prosecutor, Magistrate and the disciplinary authority of the Investigating Agency, as a measure to prevent ths misuse of sectisn 167 Cr.P.C. for obtaining bail in default which is inherent in Section 167 of Cr.P.C. as observed in Aslam Babalal Desai's case thus : The prosecution cannot be allowed to trifle with individual liberty if it does not take its task seriously and does not complete it within the time allowed by law". All actions of the State or its authorities and its sfficers must be carried out in accordance with the Constitution and within the limits set-up by law. Therefore, it is obligatory on the part of the investigating agency to conclude investigation within the prescribed period of 60/90 days, as contemplated in Section 167(2). A duty is cast on the Investigating officer to satisfy the Magistrate as to why he could not file the charge-sheet within the prescriber! tine, by filing his explanatisn, giving special reasons supported by an affidavit and case diary on or before last date of the prescribed period.....

......,..3/-

and on the date charge-sheet is file beyond the prescribed period to xxx enable the Magistrate to satisfy himself that in the facts and circumstances brought before him such investigation could not have been completed within prescribed period far justifiable reasons. If,the Magistrate is satisfied that the explanation so given is reasonable, he may record so which will result in absolving the investigating officer and his obligation under law and committing the default, If the Magistrate finds that there is no justifiable reasons fsr not filing the charge-sheet within prescribed time, then he he xhxxxx should record so and then it will be the duty of the Ld.Public Prosecutor to submit hisreport to the Disciplinary Authority of the investigation officer for appropriate action, against the Investigation Officer for such default in performing the duty. Thersafter, the disciplinary authority is expected to proceed in the matter and submit his action taken report to the concenned Magistrate, through their prosecuting agency. This procedure will provide safeguard to the misuse of authority by investigating xgxx agency and also serve the interest of xxxx justice by promoting the mandate as enshrined in Article 21 & 22 of the Constitutisn of India. In the present case, this court is prima-facie of the opinion that, in Crime No.80/1998, the Investigating Officer was negligent in filing the charge-sheet against the non-applicants/accused, within the prescribed time and for no justification, though the investigation was almost over Well within time. The Ld.APP has assured the court that, a Departmental enquiry in the matter is being initiated and this court would not like to observe anything which would affect and influence the Departmental proceed-ings, Initiated against the Investigation Officer, but expects that, in case, the Investigation Officer is found guilty of such misconduct, the authorities will sternly deal with him.

(14) It is made clear that, failure to comply with the above requirements apart from rendering the official concerned liable far departmental action, would also render him liable to be punished for contempt of court and any person interested, if aggrieved by non-compliance of these directions will Sa-entitled ts initiate proceedings for contempt of court. The Court, therefore, directs.. ....

all concerned to scrupulously follow the steps, as proposed and far the said purpose, the copy of this judgesent and order be forwarded to the Principal Home-Secretary, State of Maharashtra, Ham, Department and Director General of Police, State of Maharashtra, en: it shall be their obligation to circulate thes to every Police Station, under their charge and get the same notified at every Police Statim at a conspicuous places within a reasonable tine.' Copies of the judgement and order be also forwarded to Director of Public Prosecution at M Mumbai and to all Sessions Judges io the State of Maharashtra, far cirulating the same to all courts Magistrates, exercising powers of remand under Section 167 of Cr.P.C. during investigation. This' is with the hope that, in case the steps are followed, it will work as a check an one and all concerned, with the investigation of the case, remand and filing of the charge,-sheet."

3.. All the unit commanders are directed to follow the above inatructisns scrupulously and also send these instructions to all PSIs / PIs / Dy.Ss.P./ A.Cs.P. in Marathi./ Any dereliction on their part, will be taken seriously and will call for a serious departmental punishment, besides contempt of court proceedings, as has been observed by the Hon'ble High Court.

/Unit Commanders must also ensure that, instructions are notified at every P.Stn. at e conspicuous place within a reasonable time.

Compliance as communicated above be reported to this office within two weeks.

10/3/2000

(Prem Krishan Jain)
Dy.Inspector General of Police (L&O),
For Director General of Police, M.S.,
Munbai.

To

All Commrs.of Police,
All Supdts. of Police,

Copy to :-

The Addl.D.G.of Police, C.I.D., M.S., Pune,
The Addl.D.G.of Police, Training & Spl.Units,Mumbai,
All Range Spl.Is.G. of Police,
Director, M.P.A., Nasik,
All Principals P.T.Schools,

Copy submitted, to :-

Addl.Chief Secretary to the Gnvt. of Maharashtra,

Copy, w.cs., to :-

The Director,Public Prosecution,M.S.,Mumbai.

R.6.